

KTF
F.# 2016R01900

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: SUBPOENA TO WHATSAPP, INC.

TO BE FILED UNDER SEAL

**Application for Non-Disclosure Order
Pursuant to 18 U.S.C. § 2705(b)**

No. 17-MC-2865

**APPLICATION FOR ORDER COMMANDING WHATSAPP, INC. NOT TO NOTIFY
ANY PERSON OF THE EXISTENCE OF SUBPOENA**

The United States requests that the Court order WhatsApp, Inc. (“WhatsApp”) not to notify any person (including the subscribers and customers of the accounts listed in the subpoena) of the existence of the subpoena attached to the proposed Order submitted herewith for a period of one year from the date of the proposed Order.

WhatsApp is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the United States obtained the attached subpoena, which requires WhatsApp to disclose certain records and information to the United States. This Court has authority under 18 U.S.C. § 2705(b) to issue “an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order.” *Id.*

In this case, such an order would be appropriate because the attached subpoena relates to an ongoing criminal investigation that is neither public nor known to the targets of the investigation, and there is reason to believe that its disclosure will alert the targets to the ongoing

investigation. [REDACTED]

[REDACTED]

Accordingly, there is reason to believe that notification of the existence of the attached subpoena will seriously jeopardize the investigation, including by giving targets an opportunity to flee from prosecution, destroy or tamper with evidence, or change patterns of behavior. *See* 18 U.S.C. § 2705(b). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] If alerted to the existence of the subpoena, there is reason to believe that the targets under investigation will destroy that evidence and change their patterns of behavior.

WHEREFORE, the United States respectfully requests that the Court grant the proposed Order directing WhatsApp not to disclose the existence or content of the subpoena attached to the proposed Order for a period of one year from the date of the proposed Order, except that WhatsApp may disclose the subpoena to an attorney for WhatsApp for the purpose of receiving legal advice.

The United States further requests that the Court order that this application and any resulting order be sealed until further order of the Court. As explained above, these documents discuss an ongoing criminal investigation that is neither public nor known to the

targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Dated: Brooklyn, New York
October 24, 2017

BRIDGET M. ROHDE
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: SUBPOENA TO WHATSAPP, INC.

TO BE FILED UNDER SEAL

No. 17-MC-2865

ORDER

The United States has submitted an application pursuant to 18 U.S.C. § 2705(b), requesting that the Court issue an Order commanding WhatsApp, Inc. (“WhatsApp”), an electronic communication service provider and/or a remote computing service, not to notify any person (including the subscribers and customers of the accounts listed in the subpoena) of the existence of the attached subpoena for a period of one year from the date of this Order.

The Court determines that there is reason to believe that notification of the existence of the attached subpoena will seriously jeopardize the investigation, including by giving targets an opportunity to flee from prosecution, destroy or tamper with evidence, or change patterns of behavior. *See* 18 U.S.C. § 2705(b).

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that, for a period of one year from the date of this Order, WhatsApp shall not disclose the existence of the attached subpoena, or this Order of the Court, to the listed subscriber or to any other person, unless and until otherwise authorized to do so by the Court, except that WhatsApp may disclose the attached subpoena to an attorney for WhatsApp for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until
otherwise ordered by the Court.

Dated: Brooklyn, New York
October 24, 2017

s/Sanket J. Bulsara

The Honorable Sanket J. Bulsara
United States Magistrate Judge

